

“Virtual NXX” Traffic and Inter-Carrier Compensation

- I. First Principles: ISP-Bound Traffic “Terminates” With the ISP, Not “On the Internet”
 - A. *Establishing Jurisdiction Requires Analysis of the End-to-End Nature of Traffic*
 - 1. The DC Circuit twice approved end-to-end analysis as appropriate for determining the jurisdictional nature of ISP-bound traffic
 - B. *The DC Circuit Affirmed That ISP-Bound Traffic “Terminates” at the ISP Receiving the Call, Based on the Commission’s Definition of “Termination”*
 - 1. The DC Circuit reviewed the Commission’s end-to-end analysis in 2000, and cited the FCC’s own definition of “termination” (consisting of the switching of the traffic at the terminating LEC’s end-office switch and the delivery of the traffic to the called party (*i.e.*, ISP) premises)
 - 2. The customer’s communications may or may not “continue” beyond the ISP server, but that does not change the “termination” of the call to the ISP at the ISP’s server, according to the DC Circuit and the FCC’s rules
 - C. *The ISP’s Server Is the Point of Termination of This Traffic, and Relevant to the Determination Whether It Is Local Exchange or Inter-Exchange*
- II. If the ISP’s Server Is Not In the Originating LEC’s Local Calling Area, the Traffic Is Inter-Exchange and Subject to Access Charges, Regardless of the Called Party’s Number
 - A. *The ISP-Bound Compensation Rules Were Intended To Apply To Local ISPs*
 - 1. In both 1999 and 2001, the Commission repeatedly characterized the ISP’s server as “local” to the originating LEC – the Commission never indicated any intention that inter-exchange traffic would come within the scope of the compensation rules for ISP-bound traffic
 - B. *Where the ISP’s Server Is Not Local, Traffic Is Inter-Exchange Telecommunications Traffic And Subject to Access Charges*
 - C. *Carriers That Originate Inter-Exchange Traffic to “Virtual NXX” Numbers Are Entitled to Impose Access Charges for the Origination of Such Traffic*
 - 1. An ISP’s use of “virtual NXX” numbers to avoid the cost of installing a local server does not change the inter-exchange nature of the traffic
 - 2. Toll trunks are becoming congested with this traffic, yet the originating carrier receives no revenues with which to expand its toll facilities
 - 3. Legitimate toll customers, on whose traffic access charges are assessed, are harmed by this ever-growing congestion and access avoidance